

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6865 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHARATBHAI LAXMANBHAI VASAVA...PETITIONER

Versus

DISTRICT MAGISTRATE, BHARUCH & OTHERS...RESPONDENTS

Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 19/02/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner who is detenu calls in question the legality and validity of the order of detention dated 4th September, 1997, passed by the District Magistrate, Bharuch, invoking her powers under section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short "the Act"), consequent upon which the petitioner has been arrested and at present is under detention.

2. In order to appreciate the rival contentions, necessary facts may in brief be stated. The District Magistrate, Bharuch and also the District Superintendent of Police at Bharuch had come to know that the petitioner was disturbing public order by his nefarious activities with the result the people were feeling insecured. They therefore, studied the papers available in different Police Stations and could note that about 4 complaints were filed against the petitioner with the Ankleshwar Police Station. All those complaints were relating to the offences punishable under section 66(1)(b), 65(b), 65(c), 65(e), 65(f) and 81 of the Bombay Prohibition Act. As per the record of those cases, the petitioner was found in possession of huge quantity of liquor and necessary equipments to run the distillery without any pass or permit. The District Magistrate was then apprised that the petitioner was terrorising the people and making the people to bend his way so that he could carry on his liquor business smoothly and without any hurdles. The petitioner was also, by his subversive activities disturbing the public order. As he was considered to be the head strong person, no one was ready to come forward to lodge the complaint against him or make any statement against him as every one was worrying about his safety. After great persuasion and when assurance was given that the facts & particulars disclosing their identify would be kept secret, some of persons, under great tension gave statements. After a deep study of the materials before him, the police authority requested the District Magistrate to pass appropriate order under the Act. The District Magistrate also after detailed inquiry was satisfied that to curb the anti social, subversive and chaotic activities of the petitioner disturbing public order, the ordinary law was falling short and the only way out was to pass the order of detention and detain the petitioner. She therefore, passed the impugned order cosequent upon which the petitioner is at present under detention.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continued detention is rendered illegal. There was no justification for the authority passing the detention order to withhold the opportunity, exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be

exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenu of his right to have effective representation. As the particulars were not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person, or to form a reasonable belief that maintenance of public order was adversely affected. The statements recorded are vague and necessary particulars when wanting, the order is bad in law and is liable to be quashed.

4. Mr.U.R.Bhatt, the learned APP has vehemently refuted the allegations made, submitting that there is no delay on the part of the authority passing the order of detention, promptly order was passed, and in the public interest certain facts & particulars are withheld. As both later on confined to the only point, I will not dwell upon other points.

5. In this case, the last offence against the petitioner was registered on 14th April, 1997 and the last statement was recorded on 26th June, 1997. Thereafter on 4th September, 1997, the impugned order came to be passed. It is therefore, the contention of the petitioner that after a great delay, the order was passed and therefore, his right to make effective representation was jeopardized. Unexplained delay was sufficient to hold that there is no justification in passing the impugned order late.

6. At this stage, I think it proper to refer one decision of the Apex Court rendered in the case of Pradip Nilkanth Paturkar v. S. Rama Murthi & others AIR 1994 SC 656, wherein it is held that, if the detention order is passed after a long delay from the last offence registered or the statements of the witnesses recorded, the same on the ground of delay, is required to be set aside, if the delay prejudices the detenu. It is also made clear that the delay ipso facto in passing an order of detention after the incident is not fatal to the detention of a person, for in certain cases, delay may be unavoidable and reasonable. What is required by law is that the delay must satisfactorily be explained by the detaining authority. In the case before the Supreme Court, about 5 months and 8 days after the last registration of the offence and 4 months after the statements which came to be recorded last, the detention order was passed, and so on the grounds of delay, the detention order was quashed and the detention order was ordered to be set aside by holding that the delay had

prejudiced the detenu's rights.

8. It is therefore clear that the delay in all cases will not be fatal. It all depends upon the facts and circumstances of each case. It is serious or corrigible, on the length of the gap, short or long, has to be determined on the facts and circumstances appearing in that particular case. In the case on hand, as per the statement before me, the last complaint came to be registered on 14th April, 1997 and last statement was recorded on 26th June, 1997. The impugned order came to be passed on 4th September, 1997. The order is, therefore, passed about two months & ten days after the last statement, and 4 months & 21 days after the last complaint. When there is such delay which is not explained in view of the aforesaid decision of the Supreme Court in Pardeep Nilkanth Paturkar (supra), the impugned order cannot be maintained, being illegal.

9. For the aforesaid reasons, this petition is allowed and the order of detention passed on 4th September, 1997 by the District Magistrate, Bharuch is hereby quashed and set aside, and the petitioner-detenu is ordered to be set at liberty forth with if not required in anyother case. Rule accordingly made absolute.

Amp/-